

## REMARKS

Claims 1-8, 10-24, and 26-32 stand rejected. Claims 1 and 17 are amended herein. Claims 7, 8, 23, and 24 are canceled herein. Claims 9 and 25 were canceled in a previous response. Thus, claims 1-6, 10-22, and 26-32 remain pending. The Applicant respectfully traverses the rejections and requests allowance of the claims.

### 35 U.S.C. § 103 Rejections

Claims 1, 11, 13, 15, 17, 27, 29, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,174,096 B2 (Berthold) in view of U.S. Patent Application Publication No. 2004/0001711 A1 (Koster). Claims 4, 5, 7, 8, 11, 20, 21, 23, 24, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold and Koster and further in view of U.S. Patent 6,915,075 B1 (Oberg). The Applicant respectfully requests withdrawal of these rejections in light of the following discussion.

Claim 1 has been amended to incorporate the limitations of dependent claims 7 and 8. As such, the discussion of claim 1 will incorporate the 35 U.S.C. § 103(a) rejection of claims 7 and 8.

Claim 1 now requires, in part, a user detecting a problem with a transfer of first user communications over a first optical wavelength. The user transfers a control instruction to a first Point-of-Presence (POP). The first POP receives the control instruction and transfers the first user communications to the optical network over a second optical wavelength instead of the first optical wavelength, responsive to the control instruction. Further, when the user detects a problem with the transfer of the first user communications over the first optical wavelength, the user transfers a second control instruction to a second POP. The second POP receives the second control instruction and receives the first user communications from the optical network over the second optical wavelength instead of the first optical wavelength, responsive to the second control instruction. The second POP also transfers the first user communications to a second user system.

In the rejection of claims 7 and 8, the Examiner does not discuss the limitation of a *user* detecting a problem with a communication transfer and transferring a control instruction to the first POP and the second POP (OA, p. 5, line 19 – p. 6, line 8). Rather, the Examiner asserts that Oberg teaches a power detector in demultiplexer 27 and a signal detector in receive end

transponder 29 for detecting failure of any wavelength channels (OA, p. 6, lines 1-3). Demultiplexer 27 and receive end transponder 29 detecting a failure in Oberg are not equivalent to the user detecting a problem and sending control instructions, as required by the limitations of claims 7 and 8 incorporated into claim 1.

Further, Berthold teaches optical selector 50 and transceiver 32 for detecting a loss of signal, loss of modulation, or more sophisticated signal quality detection (Berthold, col. 5, lines 29-33). Optical selector 50 and transceiver 32 detecting signal quality in Oberg are not equivalent to the user detecting a problem and transferring control instructions, as required by amended claim 1.

Likewise, Koster teaches a network management system for monitoring a lightpath (Koster, para. 0033). The network management system monitoring a lightpath in Koster is not equivalent to the user detecting a problem and transferring control instructions, as required by amended claim 1.

Therefore, the prior art fails to disclose, teach, or suggest all the elements of amended claim 1 and such indication is respectfully requested. Independent claim 17 contains limitations similar to claim 1 and should be allowed for at least the same reasons as claim 1.

The remaining dependent claims, while separately allowable over the art of record, depend from otherwise allowable independent claims and such indication is respectfully requested.

Claims 2, 3, 10, 18, 19, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold and Koster and further in view of U.S. Patent No. 7,092,642 B2 (Way). A discussion of this rejection is obviated in view of the discussion above distinguishing Berthold and Koster.

Claims 6 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold and Koster and further in view of U.S. Patent No. 6,917,759 B2 (de Boer). A discussion of this rejection is obviated in view of the discussion above distinguishing Berthold and Koster.

Claims 14, 16, 30, and 32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Berthold and Koster and further in view of U.S. Patent No. 6,122,082 (Fishman). A discussion of this rejection is obviated in view of the discussion above distinguishing Berthold and Koster.

**35 U.S.C. § 102 Rejection**

Claims 1 and 17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Oberg. A discussion of this rejection is obviated in view of the discussion above distinguishing Oberg.

**CONCLUSION**

Based on the above remarks, the Applicant submits that the claims in their present form are allowable. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant thus respectfully requests allowance of the claims.

The Applicant believes no fees are due with respect to this filing. However, should the Office determine fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765.

Respectfully submitted,

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